

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

**FILED**

JUL 22 2002 *LR*

CONNELLY MANAGEMENT, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
AMERICAN HEARTLAND HEALTH )  
ADMINISTRATORS, INCORPORATED; )  
NORTHAMERICAN INDEMNITY COMPANY; )  
and FERGUSON MARKETING GROUP, )  
INC., )  
Defendants. )

LARRY W. PROPPES, CLERK  
CHARLESTON, SC

CASE NO. **2 02 2440 18**

Pending in:

IN COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 02-CP-10-2389

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant American Heartland Health Administrators, Inc. ("AHHA") files this Notice of Removal of the above-styled action with this Court:

1. Plaintiff Connelly Management, Inc. ("Connelly") filed this action on or about June 4, 2002, in the Court of Common Pleas for the Ninth Judicial District of Charleston County, South Carolina. AHHA was served with the Summons and Complaint on June 21, 2002. Copies of all process, pleadings and orders served on AHHA while this action was in the Court of Common Pleas for the Ninth Judicial District are attached hereto as Exhibit "A".

2. AHHA files this Notice of Removal within the thirty (30) day time limit set forth in 28 U.S.C. §1446(b). AHHA represents to this Court that Counsel for AHHA has attempted to contact Defendant Ferguson on numerous occasions to obtain Ferguson's consent to this removal. As the date of this Removal, AHHA has been unable to reach anyone at Ferguson to obtain consent; however, we have no reason to believe that Ferguson is opposed to this

removal. As to Defendant NAI, NAI is a foreign corporation located in Brussels, Belgium, and the only method to obtain service on NAI is through the provisions of the Hague Convention. It appears that the Plaintiff has not begun this process, and thus NAI is not properly served in this case.

3. This action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1332(e) and may be removed pursuant to 28 U.S.C. §1441. Plaintiff Connelly is the Employer Sponsor of an ERISA Employee Welfare Benefit Plan for which Defendant AHHA served as Plan Fiduciary/Administrator, and which benefit plan was selected for the Plaintiff by Defendant Ferguson, acting in its capacity as an agent for the Plaintiff. Defendant NAI is the reinsurer of the Plaintiff's Employee Welfare Benefit Plan. The essence of Plaintiff's Complaint is that AHHA and NAI breached their respective Fiduciary duties to the ERISA Plan and Plan Sponsor.

4. To the extent that the Plaintiff has any such claims against the Defendants, the claims arise under and are governed by ERISA 29 U.S.C. §§1001 et seq.

5. The health insurance plan offered by the Plaintiff to its employees is an Employee Welfare Benefit Plan governed by ERISA. See 29 U.S.C. §§1002, 1003(a). The Plan does not fall within any exception to ERISA's coverage as described in §4(b) of ERISA, 29 U.S.C. §1003(b). Accordingly, several of the Plaintiff's State law tort claims undoubtedly "relate to" an Employee Benefit Plan and are expressly preempted by §514(a) of ERISA, 29 U.S.C. §1144(a).

6. Federal Courts have exclusive jurisdiction over claims such as this Plaintiff's, regardless of the amount in controversy or the citizenship of the parties. See §502(f) of ERISA

29 U.S.C. §1132(f).

WHEREFORE, Defendant AHHA requests that the Court enter all orders necessary to effect the removal of this action from the Court of Common Pleas of the Ninth Judicial District, County of Charleston, South Carolina to the United States District Court for the District of South Carolina, Charleston Division.

Respectfully submitted,

John A. Claro, Esq., OBA# 1720  
RAINEY, GOODWIN, MEE & MARTIN, LLP  
600 Union Plaza  
3030 Northwest Expressway  
Oklahoma City, Oklahoma 73112  
Telephone: 405.948.0423  
Facsimile: 405.948.8414  
E-Mail: [romanokie@earthlink.net](mailto:romanokie@earthlink.net)

LEAD COUNSEL FOR  
DEFENDANT AMERICAN HEARTLAND HEALTH ADMINISTRATORS, INC.,  
(Admission pending)

Samuel H. Altman, Federal Bar No. 1066  
ALTMAN & ALTMAN, P. A.  
184 East Bay Street, Suite 203  
P. O. Box 339  
Charleston, South Carolina 29402  
CO-COUNSEL FOR  
DEFENDANT AMERICAN HEARTLAND HEALTH ADMINISTRATORS, INC.

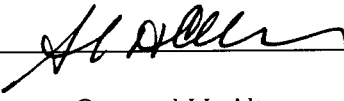
  
\_\_\_\_\_  
Samuel H. Altman

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of July, 2002, a true and correct copy of the NOTICE OF REMOVAL has been served by First-Class U. S. Mail, postage prepaid and properly addressed, upon the following:

Douglas A. Barker, Esq.  
DOUGLAS A. BARKER, P.A.  
171 Church Street, Suite 160  
Charleston, South Carolina 29401  
Telephone: 843.722.3312  
Facsimile: 843.577.0460  
E-Mail: [mail@douglasbarker.com](mailto:mail@douglasbarker.com)  
ATTORNEY FOR  
PLAINTIFF CONNELLY MANAGEMENT, INC.

Sally R. Young, Esq.  
CONNELLY MANAGEMENT, INC.  
410 Mill Street, Suite 201  
Mt. Pleasant, South Carolina 29464  
Telephone: 843.849.5293  
Facsimile: 843.849.5291  
IN - HOUSE COUNSEL FOR  
CONNELLY MANAGEMENT, INC.

  
\_\_\_\_\_  
Samuel H. Altman

OF COUNSEL:  
Amy H. Wellington, OBA# 9467  
8514 Waverly Avenue  
Oklahoma City, Oklahoma 73120  
Telephone: 405.858.0338

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO. 02-CP-10- 2389

Connelly Management, Inc.  
Plaintiff.

vs.

American Heartland Health Administrators,  
Incorporated; North American Indemnity  
Company; and Ferguson Marketing Group,  
Inc.,  
Defendants.

SUMMONS

BY

JULIE A. ARTHUR  
CLERK OF COURT

2002 JUN -4 PM 1:31

FILED

TO: DEFENDANTS ABOVE NAMED:

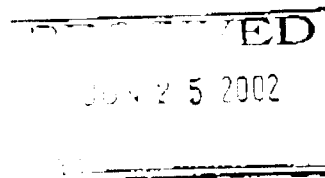
YOU ARE HEREBY SUMMONED and required to Answer the Complaint herewith served upon you and to serve a copy of your Answer to the said Complaint on Plaintiffs' Attorney, Douglas A. Barker, 171 Church Street, Suite 160, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service thereof, exclusive of the day of such service, Judgment by Default will be entered against you for the relief demanded in the Complaint.

DOUGLAS A. BARKER, P.A.

*Douglas A. Barker*

Douglas A. Barker  
171 Church Street, Suite 160  
Charleston, South Carolina 29401  
843.722.3312  
843.577.0460 (facsimile)  
[mail@douglasbarker.com](mailto:mail@douglasbarker.com) (e-mail)



Charleston, South Carolina  
May 31, 2002

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO. 02-CP-10-\_\_\_\_\_

Connelly Management, Inc. )  
)  
Plaintiff, )  
)  
vs. )  
)  
American Heartland Health Administrators. )  
Incorporated; North American Indemnity )  
Company; and Ferguson Marketing Group. )  
Inc., )  
)  
Defendants. )

COMPLAINT

BY \_\_\_\_\_

2002 JUN -4 PM 1:31  
JULIE J. ARMS TRONG  
CLERK OF COURT

FILED

Plaintiff above-named, complaining of the Defendants above-named, alleges and states as follows:

1. Plaintiff Connelly Management, Inc. is a corporation organized and existing under the laws of the state of South Carolina with its principle place of business located at 410 Mill Street, Mt. Pleasant, South Carolina 29464.
2. Defendant American Heartland Health Administrators, Incorporated ("AHHA"), is a corporation organized and existing under the laws of a state other than South Carolina, licensed to do business in South Carolina and in the business of providing claims administration services for employee insurance plans.
3. Defendant North American Indemnity Company ("North American Indemnity") is a corporation organized and existing under the laws of a state other than South Carolina, licensed to do business in South Carolina and in the business of reinsuring employee welfare benefit plans.
4. Defendant Ferguson Marketing Group, Inc. is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business located at 815 East Arctic Avenue, Folly Beach, South Carolina 29439.

5. Defendant Ferguson Marketing Group, Inc. sold to Plaintiff Connelly Management, Inc., an insurance benefit plan for Plaintiff's employees to be administered by AHHA and insured by North American Indemnity.
6. Plaintiff Connelly Management, Inc.'s contract with AHHA is dated March 19, 2001.
7. Plaintiff Connelly Management, Inc.'s contract with North American Indemnity commenced at 12:01 a.m. on March 1, 2001, and was to continue in force for a period of one year.
8. Plaintiff Connelly Management, Inc. paid in excess of \$1,200,00.00 in consideration for the contractual relationships described above.
9. Plaintiff Connelly Management, Inc., has fully performed all material provisions of the above-referenced contracts.
10. Defendants AHHA, North American Indemnity, and Ferguson Marketing Group have failed and refused to perform pursuant to the above-referenced contracts, and are in breach thereof, to the damage and detriment of Connelly Management, Inc., and its employees.

**FIRST CAUSE OF ACTION**

(Breach of Contract)

(AHHA and North American Indemnity)

11. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
12. Defendants AHHA and North American Indemnity have failed to perform material provisions of their respective contracts, and are in breach thereof.
13. As a result of these Defendants' breaches of contract, Plaintiff has been damaged in an amount of actual and special damages to be determined at trial.

**SECOND CAUSE OF ACTION**

(Breach of Covenant of Good Faith and Fair Dealing)

(AHHA and North American Indemnity)

14. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
15. Defendants AHHA and North American Indemnity owed a duty of good faith and fair dealing to Plaintiff Connelly Management, Inc.
16. Defendants AHHA and North American Indemnity have failed to act in good faith, thereby breaching the covenant of good faith and fair dealing contained in the above-referenced contracts
17. As a result of Defendants' breach of the covenant of good faith and fair dealing Plaintiff has been damaged in an amount of actual and special damages to be determined at trial.

**THIRD CAUSE OF ACTION**

(Breach of Contract Accompanied By a Fraudulent Act)

(AHHA and North American Indemnity)

18. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
19. Defendants AHHA and North American Indemnity have received payment for services to be rendered.
20. Defendants AHHA and North American Indemnity entered the above-referenced contracts and received payment therefor with the intent not to perform their contractual duties.
21. That Defendants' receipt of money accompanied by their breach of contract as described above was done with the intent to defraud and is actually fraudulent by its nature.
22. As a direct and proximate result of Defendants' breach of contract and accompanying



fraudulent act as described above, Plaintiff has suffered and will suffer pecuniary losses and is entitled to actual damages of not less than \$1,200,000.00 together with prejudgment interest at 8.75% from the date the contracts were to have commenced; together with damages of an incidental, consequential, and special nature which include but are not limited to costs, interest, and attorneys' fees; plus punitive damages in an amount to be proven at trial

**FOURTH CAUSE OF ACTION**

(Bad Faith)

(AHHA and North American Indemnity)

23. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
24. Defendants AHHA and North American Indemnity have failed and refused to pay the contracted for insurance benefits without reasonable basis and in bad faith.
25. As a direct and proximate result of Defendants AHHA and/or North American Indemnity's bad faith, Plaintiff Connelly Management, Inc. is entitled to damages in the amount of actual, consequential, and punitive damages to be determined at trial.

**FIFTH CAUSE OF ACTION**

(Breach of Fiduciary Duty)

(AHHA and North American Indemnity)

26. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
27. Defendants AHHA and North American Indemnity owed a fiduciary duty to Connelly Management with regard to the above-referenced contracts.
28. Defendants AHHA and North American Indemnity have breached their fiduciary duty to Plaintiff Connelly Management, Inc.

29. As a direct and proximate result of Defendants AHHA and North American Indemnity's breach of their fiduciary duty, Plaintiff Connelly Management, Inc. has been damaged in an amount of actual, consequential and punitive damages to be determined at trial.

**SIXTH CAUSE OF ACTION**

(Negligence)

(Ferguson Marketing Group)

30. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
31. Defendant Ferguson Marketing Group, Inc., owed a duty of due care to Connelly Management, Inc., which duty has been breached.
32. As a direct and proximate result of Defendant Ferguson Marketing Group, Inc.'s negligence, Plaintiff Connelly Management, Inc. has been damaged in amount of actual, consequential and punitive damages to be determined at trial.

**SEVENTH CAUSE OF ACTION**

(Unfair Trade Practices)

(All Defendants)

33. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.
34. Defendants' acts, including various actions taken during the marketing of their insurance products, were acts in and affecting commerce.
35. Defendants acted in an unfair, unethical, oppressive, and deceptive manner by:
- a. making numerous misrepresentations of material facts;
  - b. failing to consider insurance laws and regulations prior to entering contractual relations with Plaintiff when they knew or should have known that such failure threatened to damage Plaintiff and others;

- c. failing to warn Plaintiff and others of the dangers inherent in their insurance product when they knew or should have known of such dangers;
- d. failing to properly train, instruct, and educate their employees and agents when they knew or reasonably should have known that such failure threatened to damage Plaintiff and others;
- e. failing to address improper claims practices when they knew or reasonably should have known that such practices threatened to damage Plaintiff and others;
- f. failing to consider the impact of their failure of performance when they knew or reasonably should have known that such impact threatened to damage Plaintiff and others;
- g. failing to consider or warn Plaintiff and others of the potentially disastrous results of their failure to perform when they knew or reasonably should have known that such impact threatened to damage Plaintiff and others; and
- h. acting in other ways that may be revealed during discovery and shown at the trial of this action.

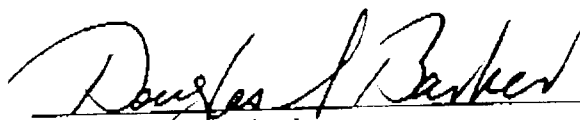
36. As a result of the above-described unlawful, unfair, oppressive and deceptive practices of Defendants, which upon information and belief have happened to others and are capable of repetition, Plaintiff has suffered direct and consequential damages as described elsewhere herein.

37. As a result of Defendants' unfair and deceptive trade practices, Plaintiff has suffered substantial damages to its detriment.

38. Pursuant to the South Carolina Unfair Trade Practices Act found in the South Carolina Code, Plaintiff is entitled to treble damages and attorney's fees as a result of Ferguson Marketing Group's unfair and deceptive trade practices.

WHEREFORE, Plaintiff prays for judgment against these Defendants, jointly and severally, for actual damages of at least \$1,200,000.00, but in an amount to be proven, plus pre-judgment interest, special damages, consequential damages, punitive damages, statutory treble damages and attorney's fees, all in amounts to be proven at trial. Plaintiff further prays for such other and further relief as this Court deems just and proper.

DOUGLAS A. BARKER, P.A.



By: Douglas A. Barker  
Attorney for the Defendant  
171 Church Street, Suite 160  
Charleston, South Carolina 29401  
Office: 843-722-3312  
Fax: 843-577-0460  
Email: [mail@douglasbarker.com](mailto:mail@douglasbarker.com)

Charleston, South Carolina  
May 31, 2002